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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,871	08/20/2001	Glenn Thomas Jordan IV		5978

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EXAMINER
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DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 11/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/913,871

Applicant(s)

JORDAN ET AL.

Examiner

Gregory R. Del Cotto

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-16, 21, 23, 28, 30, 32, 34, 38-51, 53 and 55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-16, 21, 23, 28, 30, 32, 34, 38-51, 53 and 55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

1. Claims 14-16, 21, 23, 28, 30, 34, 36, 38-51, 53, and 55 are pending.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-16, 21, 23, 28, 30, 34, 36, 38-51, 53, and 55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to instant claim 14, it is vague and indefinite in that for part c), it is unclear in that it defines one nonionic surfactant and then goes on to define another as a subset of the first which is completely different. Consistent with the specification and for purposes of examination, the Examiner has interpreted part c) to require one of the three nonionic surfactants as recited by part c). Clarification is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the

Art Unit: 1751

applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 14-16, 21, 23, 28, 30, 34, 36, 38-51, 53, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/06466.

'466 teaches detergent compositions containing ether-capped poly(oxyalkylated) alcohol surfactants having superior grease cleaning abilities and improved spotting/filming benefits. The alcohol surfactants have the same general formula as recited by the instant claims. These surfactants may be included in amounts from 0.1% to 15%. See page 3, line Various other detergent adjunct ingredients may also be included. See Abstract. Additional ingredients include deterative enzymes, bleaching

Art Unit: 1751

agents, chlorine bleaching agents, bleach activators and/or bleach catalysts, dispersant polymers, etc. See page 5, lines 10-30. The compositions may also contain low foaming nonionic surfactants in amounts from about 0 to 15% by weight. Suitable LFNI's include nonionic alkoxyated surfactants, especially ethoxylated derived from primary alcohols and blends thereof with more sophisticated surfactants such as the PO/EO/PO reverse block polymers. See page 13, lines 1-15. Optional low cloud point nonionic surfactants additionally comprise a polyoxyethylene, polyoxypropylene block polymeric compound. These are designated Pluronic, Reversed Pluronic, and Tetronic. See page 15, lines 1-25. Additionally, the compositions may contain other deterative surfactants in amounts from about 0.5% to about 50% by weight. These surfactants include C10-C18 alkyl alkoxy sulfates, C10-C18 alkyl polyglycosides, C10-C18 amine oxides, and the like. See page 19, lines 25-50.

Bleaching agents include hydrogen peroxide, sodium perborate, sodium dichloroisocyanurate, etc. See page 23, lines 1-25. Additionally, bleach activators and bleach catalysts may be used in the compositions. See page 23, line 25 to page 28, line 10.

'466 does not specifically teach a cleaning composition containing a builder, an oxide surfactant, a specific low foaming nonionic surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a builder, an oxide

Art Unit: 1751

surfactant, a specific low foaming nonionic surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '466 suggest a cleaning composition containing a builder, an oxide surfactant, a specific low foaming nonionic surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 14-16, 21, 23, 28, 30, 34, 36, 38, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mertens et al (US 6,026,296).

Mertens et al teaches a dilute microemulsion containing from 0.1% to 20% of an anionic surfactant, 0.1% to 10% of an ethoxylated-butoxylated nonionic surfactant, 0 to 5% of an ethoxylated nonionic surfactant, 0.1% to 10% of an amine oxide surfactant, 0 to 15% of magnesium sulfate heptahydrate, 0.055 to 2% of a fatty acid, 0 to 10% of a perfume, and water. See column 3, lines 40-55. The ethoxylated/butoxylated nonionic surfactants include a surfactant having a C8 alcohol, 8 moles of ethylene oxide and 2 moles of butylenes oxide. See column 9, lines 10-25.

Mertens et al do not specifically teach a cleaning composition containing a builder, an oxide surfactant, a specific low foaming nonionic surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a builder, an oxide

Art Unit: 1751

surfactant, a specific low foaming nonionic surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Mertens et al suggest a cleaning composition containing a builder, an oxide surfactant, a specific low foaming nonionic surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 14-16, 21, 23, 28, 30, 34, 36, 38, 41, 53, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lentsch et al (US 5,578,134).

Lentsch et al teach a method of sanitizing and destaining ware products, including silverware. See column 3, lines 60-65. The composition contains 1 to 40% of hydrogen peroxide, 0.5 to 25% of peroxy acid, 5 to 75% carboxylic acid, 0.1 to 25% solubilizer, 0 to 10% chelating agent, 0 to 40% rinse agent, and the balance carrier. See column 10, lines 15-30. Suitable chelating agents include phosphonic acids, salts of EDTA, NTA, etc. See column 7, lines 5-50. Suitable rinsing agents include surfactants or mixtures of surfactants. Suitable surfactants include amine oxides, sulfobetaines. Also, surfactants include nonionic surfactants such as C12-7(EO)7(BO)1.7R wherein R is a C1-C6 alkyl moiety, ethoxylated and/or propoxylated surfactants, etc. See column 8, lines 5-69.

Lentsch et al do not specifically teach a cleaning composition containing a builder, an oxide surfactant, a specific low foaming nonionic surfactant, and the other



Art Unit: 1751

requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a builder, an oxide surfactant, a specific low foaming nonionic surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Lentsch et al suggest a cleaning composition containing a builder, an oxide surfactant, a specific low foaming nonionic surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

### ***Response to Arguments***

Applicant states that none of the references teach the claimed composition. In response, note that, the Examiner maintains that any of the references applied above teach or suggest the claimed composition. Note that, claim 14 only requires the presence of one nonionic surfactant and each of the references discloses at least one as recited by instant claim 14.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

Art Unit: 1751

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 14-16, 21, 23, 28, 30, 34, 36, 38-51, 53, and 55 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. US 5,967,157. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-15 of U.S. Patent No. US 5,967,157 encompass the material limitations of the instant claims.

Claims 14-16, 21, 23, 28, 30, 34, 36, 38-51, 53, and 55 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11-33 of copending Application No. 09/913870. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 11-33 of 09/913870 encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within


Art Unit: 1751

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Gregory R. Del Cotto  
Primary Examiner  
Art Unit 1751

Application/Control Number: 09/913,871

Page 11

Art Unit: 1751

GRD

November 8, 2003